



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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June 17, 2008

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation
FROM: Subcommittee on Aviation Staff
SUBJECT: Congestion Management in the New York Airspace

PURPOSE OF HEARING

The Subcommittee will meet on Wednesday, June 18 at 10:00 a.m. in room 2167 Rayburn House Office Building to receive testimony regarding Congestion Management in the New York Airspace.

BACKGROUND

Although the slowing economy and the terrorist attacks of September 11, 2001, temporarily reduced aviation congestion, the number of air travelers has since rebounded and has surpassed the previous record-high level experienced in 2000. With the rebound in airline travel, the number of delayed flights has increased. According to the Bureau of Transportation Statistics (BTS), 2007 marked record airline flight delays of nearly 27 percent, second only to 2000 for delays. The Department of Transportation Inspector General (DOT IG) found that of these delays, 88,234 flights were delayed over an hour, 7,659 had ground delays of two to three hours, and almost 1,700 flights experienced ground delays of over three hours.

Absent aviation system capacity improvements, delays will increase significantly as airline travel continues to increase. The Federal Aviation Administration (FAA) forecasts that, from 2008 through 2021, aviation passenger traffic will increase by 49 percent. This growth will place even greater demands on an already delay-plagued system. The FAA predicts that, absent any changes to the aviation system, delays will increase by 62 percent by fiscal year 2014. The Air Transport Association (ATA) estimates that aviation delays costs the economy approximately \$12.5 billion a year.¹

¹ ATA, Cost of Delays, (2008), <http://www.airlines.org>.

Due to increased fuel rates, many air carriers have announced decreases to flights within the United States. Most of the cuts have tended to be at non-hub airports, with a 1.5 percent decrease at large hubs between 2000 and 2008.² However, although there have been recent air carrier capacity decreases, the Department of Transportation (DOT) believes that delays will still occur at the country's busiest airports, including airports located in the New York (NY) area airspace.

I. Capacity Constraints

Across the entire national airspace system, according to the FAA, only eight of the top 35 busiest airports in the country have airfield projects under construction. These projects include 3 new runways (Seattle Tacoma, Washington Dulles, and Charlotte Douglas International Airports), 2 airfield reconfigurations (Los Angeles and Chicago O'Hare International Airports), 1 runway extension (Philadelphia International Airport), 1 end around taxiway (Dallas Fort Worth International Airport), and 1 center taxiway (Boston's Logan International Airport). These eight projects will provide the airports with the potential to accommodate about 400,000 more annual operations and improve airport safety and efficiency at a cost of approximately \$4.2 billion with about \$1.1 billion in Airport Improvement Program funding. Only one of these projects, the runway extension at Philadelphia International Airport, is in the New York area airspace. Increasing capacity, however, is not always possible.

According to the FAA, approximately one-third of the nation's flights and one-sixth of the world's flights either start or pass through the airspace that supports New York's three main airports: LaGuardia International (LGA), John F. Kennedy International (JFK), and Newark Liberty International (EWR) accounting for three-quarters of the chronic airline delays experienced today.³ Accordingly, delays in the northeast have a rippling effect across the country. In 2007, the BTS lists JFK, LGA, and EWR as the three worst on-time arrival major airports in the United States. Less than 60 percent of flights at these airports arrived on-time. According to the BTS, the first third of 2008 was not much better for these airports: LGA ranked last, EWR 3rd worst and JFK 6th worst for on-time arrivals. Even though in the last twelve months scheduled flights to LGA and EWR fell almost 3 and 4 percent respectively, delays continued to plague these airports. At JFK, scheduled flights have increased 12 percent in the past twelve months, and since 2000, they have increased 27 percent. To decrease the number of delays, capacity needs to be added to the system.

According to the FAA, the New York City metropolitan area (including EWR) has one of the largest challenges meeting current demand with available capacity. Much of the area around these airports is densely populated and some are adjacent to natural resources that prohibit further construction, such as the Atlantic Ocean. According to the FAA, the New York, New Jersey, Philadelphia Metropolitan Area Airspace Redesign (NY Area Airspace Redesign) will play a critical, near-term role in enhancing capacity, reducing delays, reducing emissions, transitioning to more flexible routing and ultimately saving money for airlines and airspace users in fuel costs. The FAA states that by 2011, this project will reduce delays by 20 percent in the NY area airspace and reduce noise levels for 619,023 people who currently experience noise at or above 45 dB

² Benet Wilson, Consultant: Competition for Air Service Rises as Capacity Drops, *Aviation Daily*, (June 17, 2008) at 4.

³ Press Briefing by Senior Administration Officials on Aviation Congestion Announcement, (September 27, 2007), <http://www.whitehouse.gov/news/releases/2007/09/20070927-10.html>.

DNL. Even with these improvements, the NY area airspace congestion will continue to be a challenge.

II. New York Aviation Rulemaking Committee (ARC)

On September 27, 2007, the DOT announced administrative steps to reduce delays and alleviate related consumer problems. First, DOT created a New York Aviation Rulemaking Committee (ARC) to explore options for addressing airspace congestion and flight delays in the New York area airspace. Members of the ARC included officials from DOT, FAA, the Port Authority of New York and New Jersey (Port Authority), the State of New York, airlines, consumer groups, and other interested parties. Second, DOT sought to increase consumer protection by improving access to DOT's complaint system, stronger oversight of chronically delayed flights, a rulemaking to increase compensation for passengers who are involuntarily bumped due to an oversold flight, effectiveness of contingency plans for tarmac delays, and point of purchase information related to chronically delayed flights. DOT also required the FAA to convene a schedule reduction meeting at JFK. The final step focused on the implementation of the NY Area Airspace Redesign to decrease delays.

The ARC was chartered to explore the options for changing current policy and impacts of those changes on airlines, airports, and the traveling public. The goal was to identify ideas that would reduce congestion and efficiently allocate the scarce capacity of the New York area airports.⁴ The ARC's findings were submitted to the DOT on December 13, 2007, in the following categories: Operational/Infrastructure Improvement – New York Airspace Czar, General Aviation, Voluntary Reductions; Congestion Pricing, Auctions, and Aircraft Gauge; Gate Utilization and Perimeter Rule; Priority Aviation Traffic Preferences; and International Air Transport Association Scheduling Guidelines, Other Administrative Options.

The DOT has implemented a number of the operational improvements recommended by the ARC. The ARC reported seventy-seven items to mitigate delays in the New York area airspace; of these, the initial seventeen identified by the Port Authority and ATA in October 2007 are underway and expected to be complete by the summer of 2008. One example is the new take-off patterns at the EWR and Philadelphia International airports, as a part of the NY Area Airspace Redesign project, which allow aircraft to fan out after taking off so that the next aircraft may take off sooner. Others are a new routing alternative that provides an "escape route" into Canadian airspace from the New York region so airlines can fly around summer thunderstorms and high winds, and a second westbound route for aircraft. In April, DOT appointed Marie Kennington-Gardiner to be director of the newly-created New York Integration Office. The DOT also has issued two proposed rulemakings that would impose a slot auction mechanism to redistribute slots at LGA, JFK, and EWR. According to DOT, roughly sixty percent of the seventy-seven items have been fully implemented.

⁴ Letter from D.J. Gribbin and Nancy LoBue, New York ARC Chair and Vice-Chair, to Mary E. Peters, Secretary of Transportation (December 13, 2007).

III. Flight Caps

On December 19, 2007, in an effort to decrease delays in the NY region, DOT announced voluntary flight caps at JFK.⁵ Negotiated by airlines and DOT, caps were set at an average of eighty-two to eighty-three flights an hour beginning March 30, 2008. In March 2008, DOT also announced voluntary flight caps at EWR⁶ to an average of eighty-three an hour, beginning on June 1, 2008. Last summer, peak hour slots averaged between 90-100 operations per hour and were predicted to be higher this summer. Under the terms of the hourly caps, airlines may shift their flights to times of the day when the airports have unused capacity rather than the current overloaded peak hours. The voluntary caps at both JFK and EWR, which were agreed to by the carriers, are in place through October 2009, at which time their effectiveness will be re-evaluated. LGA's cap of 75 scheduled and 6 unscheduled flights per hour was set to expire on January 1, 2007; however, the FAA issued an order on December 27, 2007, to retain the cap.

IV. Auction Proposals

On April 16, 2008, the DOT issued a Supplemental Notice of Proposed Rulemaking (SNPRM) for LaGuardia Airport, which would impose a slot auction mechanism to redistribute slots (also known as operation authorizations).⁷ Under the SNPRM, DOT proposed two market-based options that would require a limited number of slots to be made available at LGA through an auction process:

- **Option 1:** All air carriers would be given up to 20 slots a day free of charge for the 10 year life of the rule. Meanwhile, over the next five years, 8 percent of the additional slots total currently used by an airline would be available to any carrier via an auction. An additional 2 percent of the slots would be retired to help cut the record delays at the airport. Half of the 10 percent would be selected by the carrier and half would be selected by the FAA.⁸ Under this proposal, FAA would invest proceeds from the one-time auction in new congestion and capacity initiatives in the New York region.
- **Option 2:** Airlines would have access up to 20 slots a day for a 10 year period. Beyond those flights, 20 percent of the slots currently used by the airlines would be made available over the next five years to all airlines through an auction. Under this option, the carriers would retain the net proceeds of the auction.⁹

On May 16, 2008, DOT issued a NPRM, which includes two proposals to maintain caps at JFK and EWR and to allocate a percentage of slots at each airport via an auction:

⁵ Operating Limitations at John F. Kennedy International Airport; Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 Fed. Reg. 3510, (January 18, 2008).

⁶ Operating Limitations at Newark Liberty International Airport, 73 Fed. Reg. 29550, (May 21, 2008).

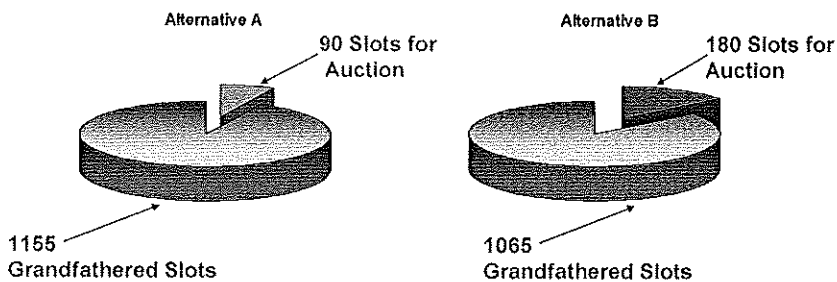
⁷ Congestion Management Rule for LaGuardia Airport; Proposed Rule, 71 Fed. Reg. 51360 (August 20, 2006). (2006 LGA NPRM) Under the original 2006 LGA NPRM, the FAA proposed to reallocate annually ten percent of the capacity at the airport based on an undetermined market mechanism and impose an average minimum aircraft size requirement for much of the fleet serving the airport. The original aircraft upgauging proposal (i.e. target average aircraft size ranging from 105 to 122 seats per aircraft) to increase capacity, was withdrawn.

⁸ All of the proposals include this procedure for selecting the slots to be auctioned or retired regardless of the percentage (10 or 20 percent).

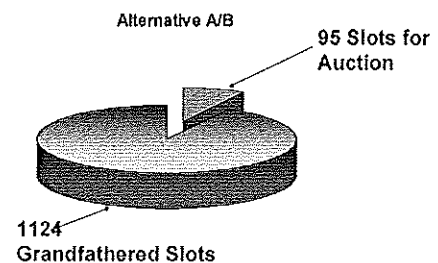
⁹ DOT, New Measures to Improve Air Travel Experience, (2008), <http://www.flightgridlocknow.gov/aviation/lagfactsheet.htm>.

- **Option 1:** At JFK and EWR, all air carriers would be given up to 20 slots a day for the 10 year life of the rule. Over the first five years of the rule, 10 percent of the airlines' slots above the 20-slot baseline would be made available via an auction. Airlines would be able to bid on their own slots, and the revenue from the auctions would be invested in congestion and capacity improvements in the region.
- **Option 2:** At JFK only, the FAA would auction 20 percent of the slots above the 20-slot baseline. Airlines would not be able to bid on their own slots, but they would retain the net proceeds of the auction.¹⁰

JFK: Alternatives 1 & 2:
total operations impacted over 10 years



EWR: Alternatives 1 & 2:
total operations impacted over 10 years



V. Concerns Regarding the Proposals

Many concerns have been raised about the slot auction proposals. First, interested parties who oppose the proposals have questioned whether the DOT/FAA has the legal authority to impose these slot auctions, arguing that the FAA's authority to manage the airspace does not include the power to lease landing rights, auction them, and then retain and use the proceeds from the slot auctions, in the absence of clear delegation of Congressional authority. According to the DOT, the FAA has the legal authority to auction slots because the slots are intangible FAA property. However, the FAA stated in the 2006 LGA NPRM that it lacked the authority, noting that "legislation would be necessary to employ market-based approaches such as auctions or congestion pricing at LaGuardia because the FAA currently does not have the statutory authority to assess market-clearing charges for a landing or departure authorization."¹¹ Additionally, the DOT has stated that, "carriers have no authority or legal property interest in the slots,"¹² but the FAA has previously allowed the carriers the right to buy, sell and borrow against these "intangible assets."

According to some stakeholders, the slots are the property right of airlines, not the government, and any attempt to take away that property would require due process and just

¹⁰ DOT, New Measures to Help Avoid Future Abrupt Groundings, Improve Air Travel, (2008), http://www.dot.gov/affairs/aviation080516/fact_sheet.pdf.

¹¹ 2006 LGA NPRM, at 51362.

¹² Madhu Unnikrishnan, Aviation Week, Airlines Furious Over DOT Slot Move, quotation attributed to D.J. Gribbin, DOT General Counsel (May 16, 2008).

compensation.¹³ Other stakeholders have stated that even if the slots are available, there is no guarantee that land-side resources will be available to accommodate the operations.

Some argue that imposition of slot auctions might limit competition by preventing new entrants and limited incumbent air carriers from entering the market because these carriers may not have the resources that legacy air carriers have to buy the slots necessary to remain viable and competitive.

Another concern is that auctions could increase the monetary cost to travelers in the New York area if airlines pass these market costs on to consumers. Currently, the market value of slots anticipated to be auctioned under the proposed rulemakings is unknown. Stakeholders indicate that additional costs to consumers could include: (1) an increase in fares with no guarantee of delay reduction; (2) a loss of flights and service options; or (3) some combination of all of the above.

In addition, concerns have been raised that if carriers are forced to cut back on existing schedules, service to small communities could decrease because there will be pressure on air carriers that lose slots to move slots currently used for small community service to larger, more lucrative markets. Similarly, slots purchased at an auction could be used only for large markets. Concerns have been raised that this could limit the opportunities of those in smaller communities to have reliable access to the New York area and could also erode the hub structures formed at the New York area airports.

DOT has said that under its proposal it intends to allow slots acquired at an auction to be subsequently sold, thereby creating a secondary market for the airlines to buy and sell the slots for value. This would allow carriers to profit from the sale of a public resource. Buying and selling slots could create the same problem as auctions with respect to competition, small community air service and consumers, as noted above.

One alternative to slot auctions proposed by some industry stakeholders is to use the International Air Transport Association (IATA) Worldwide Scheduling Guidelines (WSG) be used to control congestion in the NY region. The IATA, which publishes the WSG, claims that the WSG provides "for the allocation of scarce resources at congested airports on a fair, transparent and non-discriminatory basis." The slots are managed by a third party coordinator who acts independently of any interested party. Slot allocation under WSG reflects "historic precedence" prior IATA Summer and Winter scheduling seasons. The incumbent carrier, absent abuse, may keep its slots and these slots may not be confiscated for new entry or other purposes. If air carriers do not operate slots at least 80 percent of the time during the season, it is not entitled to those slots in the next scheduling season. Slots not allocated based on "historic precedence" go into a pool where 50 percent are reserved for new entrants and the balance may be assigned to any carrier. The slot coordinator should consider competition, providing a mix of operations, and needs of the traveling public. Carriers are allowed to exchange slots and IATA convenes two annual scheduling conferences to allow airlines an opportunity to trade slots.

According to DOT, it did not choose this option because it claims WSG severely limits competition by not allowing for new entrants at airports fully subscribed, like the airports in the New York area airspace. Further, DOT has expressed concern as to whether allocated slots under a

¹³ Ibid.

WSG scheme would become “real property” of the airlines, such that any further attempt to reallocate the slots would constitute a “taking” of airline property.

WITNESSES

MEMBER PANEL

The Honorable Charles E. Schumer
U.S. Senator
State of New York

The Honorable Christopher Shays
Congressman
Connecticut, District 4

PANEL I

Mr. D.J. Gribbin
General Counsel
Office of the Secretary
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Mr. William DeCota
Director, Aviation Department
Port Authority of New York and New Jersey

Mr. James C. May
President and CEO
Air Transport Association

Mr. Edward P. Faberman
Executive Director
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Mr. Douglas E. Lavin
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